

## **Board Membership; Nomination & Voting Process; Advisable Districts Clarification and Guidance**

The statutes governing creation of union school districts (16 V.S.A. §§ 701-724) were enacted in 1968 and have seen very few amendments in the intervening years. Although the statutes explicitly contemplate creation of *unified* union school districts (PK-12), most are written using union high schools as a model. As a result, some questions have arisen during the three voluntary merger phases of Acts 153 (2010), 156 (2012), and 46 (2015) that do not always have an explicit answer in statute. In addition, federal and state court decisions do not always provide precise details about what is or is not constitutional.

Drawing from the information that is provided in statute and court decisions, this document provides guidance regarding options for board membership and for the process of nominating and electing members. *This is guidance only. Please consult your attorney about your specific proposal.*

\* \* \*

There are two common models for board representation and election in union school districts: the Proportional Model and the At-Large Model. In addition, a federal district court in Vermont approved a third model that combines elements of both models, and which this guidance document will refer to as the Hybrid Model. *Barnes v. Mount Anthony Union High School District*, 418 F. Supp. 845 (D. Vt. 1975).

The Vermont union school district creation statutes:

- Limit the total number of board members to 18 individual members (§ 706b(b)(9))
- State that each member town is “entitled” to at least one board member (§ 706b(b)(9))
- Acknowledge that board membership must be structured to meet proportionality requirements of the Equal Protection Clause of the U.S Constitution (§ 706b(b)(9))
- Authorize election of at-large board members (§§ 706e(c) and 706k(c))
  - At-large members of the initial board must reside in and be nominated by the voters of a “necessary” district
  - Nothing in statute or court decisions applies this restriction to initial board members in the Hybrid Model
- Authorize weighted voting (§ 707(c))

### **I. Proportional Model:**

- Key Elements:
  - Membership on the union school board is apportioned to each town/village/city (“town”) within the new union school district based upon the town’s population relative to the total population in the union school district
  - Population numbers are determined by the most recent decennial census

- For example:

<u>Town</u>	<u>Population</u>	<u>Board Members</u>
A	2,000	2
B	4,000	4
C	1,000	1

- Voters in the town nominate town residents to fill the town's apportioned seats on the union school board (§ 706e(b))
- Only voters in the town can vote on that town's nominees to fill the town's apportioned seats on the union school board (§ 706e(b))
- Process for Nominating and Electing **Initial** Proportional Board Members (§ 706e(b)):
  - A legal voter in a potential member town may file a nominating petition (or petitions) for the initial school director(s) apportioned to his or her town
  - The nominee must reside in the town to which the board seat is apportioned
  - Each petition must be signed by at least the *lesser* of:
    - 30 voters in the town
    - 1 % of the legal voters in the town
  - The petition is valid only if the nominee accepts the nomination in writing
  - The signatures can only be by voters residing in the town
  - The petition must be filed with the clerk of town's school district (usually the town clerk)
  - If there is no town school district, then the petition is filed with the town clerk
  - The petition must be filed not less than 30 nor more than 40 days prior to the date of the vote to establish the union school district
  - Upon receipt of a valid petition, the clerk places the name of the person on the ballot
  - Only voters of the town vote whether to elect the town's apportioned school director(s)
  - "Advisable" Districts:
    - The study committee's proposal apportions board members to each "necessary" district and to any district that is identified as "advisable"
    - There is no difference between "necessary" and "advisable" districts in regard to nominating and electing apportioned members of the initial union school board
- Proportionality (One Person – One Vote):
  - Although proportionality does not have to be exact, a large deviation could violate the Equal Protection Clause of the U.S. Constitution – consult with your attorney about whether your proposed apportionment model is within acceptable limits
  - If your proposed model is possibly unconstitutional, there are at least three alternatives:
    - The At-Large Model (see II below)
    - The Hybrid Model (see III below)
    - The Proportional Model with Weighted Voting:
      - Each town has some number of seats apportioned to it and only the town can vote the representative from among its nominees (just as in the Key Elements of the Proportional Model listed above), but each member's vote carries a different weight

*Example #1:*

<u>Town</u>	<u>Population</u>	<u>Board Members</u>	<u>Weight of Each Member's Vote</u>
A	10,000	5	2
B	6,000	3	2
C	1,000	1	1

Example #2:

<u>Town</u>	<u>Population</u>	<u>Board Members</u>	<u>Weight of Each Member's Vote</u>
A	4,000	4	1
B	4,000	4	1
C	1,000	2	0.5

## II. At-Large Model:

- Key Elements:
  - At-large members of the union school board can reside in any town (but see exceptions regarding *initial* at-large board members below)
  - At-large members of the union school board are nominated by the voters of any town (but see exceptions regarding *initial* at-large board members below)
  - Membership is not apportioned – so proportionality requirements do not apply
  - At-large members are presumed to represent all students in the union school district
  - Voters in all towns vote on the same slate of candidates to fill all at-large seats on the union school board (§ 706e(c)) – votes are commingled
- Process for Nominating and Electing *Initial* At-Large Board Members (§ 706e(c)):
  - A legal voter residing in any “*necessary*” district may file a nominating petition for an at-large member
  - The petition can only nominate a person residing in a “*necessary*” district
  - Each petition must be signed by at least 60 voters residing in one or more of the “*necessary*” districts
  - The petition must be filed with a school district clerk in any “*necessary*” district
  - The petition must be filed not less than 30 nor more than 40 days prior to the date of the vote to establish the union school district
  - Upon receipt of a valid petition, the clerk:
    - places the name of the person on the ballot
    - notifies the clerk of every district proposed for membership in the new union school district (both “*necessary*” and “*advisable*”) to place the person’s name on the ballot in each district
  - Voters in every district proposed for membership in the new union school district (both “*necessary*” and “*advisable*”) vote whether to elect the at-large school board members
  - Votes are commingled
  - “*Advisable*” Districts:
    - On the *initial* school board:
      - A petition to nominate an at-large member can only be signed by voters residing in a “*necessary*” district
      - An at-large member must reside in a “*necessary*” district
      - The voters of *all* proposed members of the new union district (both “*necessary*” and “*advisable*”) vote for the at-large directors
    - When the new union school district is created, the “*necessary*” and “*advisable*” distinctions disappear and all towns within the new district have the same rights and duties
- Proportionality (One Person – One Vote):
  - Does not apply to the At-Large Model

### III. Hybrid Model (Apportioned Members with At-Large Voting):

- Key Elements:

- Membership on the union school board is apportioned to each town
- Apportionment does not have to be proportional to the town's population
- Numbers can be apportioned pursuant to any agreed-upon method, for example:

<u>Town</u>	<u>Population</u>	<u>Board Members</u>
A	2,100	3
B	3,200	3
C	2,500	3

<u>Town</u>	<u>Population</u>	<u>Board Members</u>
A	4,000	3
B	4,000	3
C	1,000	1

- Voters in all member towns vote on the same slate of candidates
- The ballot is categorized to represent each town's apportioned seats on the union school board (*e.g.*, in Example #2 above, the voters in each town would vote on the following: "Here is the list of candidates for Town A – vote for not more than 3; Here is the list of candidates for Town B – vote for not more than 3; Here is the list candidates for Town C – vote for not more than 1")
- The *Barnes v. Mount Anthony* case:
  - After the federal district court in Vermont determined that the original apportionment model was unconstitutional, the Mt Anthony Board presented the court with an alternative model (referred to as the Hybrid Model in this document)
  - The process in Mount Anthony Board's alternative model was roughly structured as:
    - Nominate apportioned members per the Proportional Model
    - Elect apportioned members per the At-Large Model
  - The court determined that the alternative model was constitutional, but:
    - Did not discuss its details, including the nominating and election processes
    - Did not indicate whether any variation in the approved nominating and election processes would or would not also be constitutional
- Process for Nominating and Electing *Initial* Board Members in the Hybrid Model:
  - The nominee must reside in the town to which the board seat is apportioned
  - The petition must be signed by:
    - No fewer than 1% of voters in *that town* (the approved *Mt Anthony* model, which is one of the alternatives under § 706e(b))
    - Alternatively, the petition probably could also be signed by 30 voters in that town, if that number is smaller than 1% (also § 706e(b))
    - Although there is no explicit statute or court decision addressing the issue, the petition probably could be signed by 60 voters from anywhere in the entire proposed new union district (the standard for the At-Large Model in § 706e(c)) – *especially if this method is explicitly included in the study committee's proposed Report / Articles of Agreement*
  - The petition is valid only if the nominee accepts the nomination in writing
  - The petition must be filed with the clerk of that town's school district (usually the town clerk) or with the town clerk if there is no town school district

- The petition must be filed not less than 30 nor more than 40 days prior to the date of the vote to establish the union school district
- Upon receipt of a valid petition, the clerk:
  - places the name of the person on the ballot
  - notifies the clerk of every district proposed for membership in the new union school district to place the person's name on the ballot in each district
- Voters in every district proposed for membership in the new union school district vote whether to elect the proposed school board member(s) – the votes are commingled
- All voters vote on the same slate of candidates – which is categorized to represent each proposed member town's apportioned seats on the union school board (*e.g.*, "From the list of candidates for Town A – vote for not more than 3; From the list of candidates for Town B – vote for not more than 3; From the list candidates for Town C – vote for not more than 1")
- "Advisable" Districts:
  - The reasons that residency and nomination for the initial board in the At-Large Model are limited to "necessary" districts does not exist in the Hybrid Model -- in that regard, the Hybrid Model is more similar to the Proportional Model
  - In the absence of any direction in statute or from the court, the following *guidance* is provided for the Hybrid Model:
    - The study committee's proposal apportions board members to each "necessary" district and to any district that is identified as "advisable"
    - There is no difference between "necessary" and "advisable" districts in regard to nominating and electing apportioned members of the initial union school board
- Proportionality (One Person – One Vote):
  - Does not apply to the Hybrid Model
- Potential Draft Language for Articles of Agreement Regarding the Hybrid Model (Apportioned Members with At-Large Voting):

For purposes of this article, the term "member towns" shall refer both to the forming districts that are voting whether to create a unified union school district and also to the towns within the Unified Union School District if it is created.

School directors shall be apportioned to each member town in a manner that is roughly proportional to the fraction that its population bears to the aggregate population of all member towns in the Unified Union School District.

Directors on the Board shall be voted at-large by the electorate of the Unified Union School District.

Legal voters of each member town shall nominate one or more persons who are residents of the member town for the school director position(s) apportioned to that town. *[It may be helpful to describe the process in some detail – number of signatures, etc. Also, the sentence itself would need to be changed if signatures can be from any member town (see page 4 – third bullet from the bottom)]*

*[If applicable]* Initial Board composition is based roughly on the 2010 Federal Census, and shall be recalculated promptly following the release of each subsequent decennial census.

The initial membership on the Board will be as follows:

*[Table]*

#### IV. Other Models:

It is also possible to create a board of directors with seats from more than one model (*e.g.*, some seats filled pursuant to the At-Large Model and other seats by the Hybrid Model)

#### V. After the Vote:

- Merger Vote: 16 V.S.A. § 706g requires the clerk of each district that voted on the merger to transmit a certified copy of the results to the Secretary of Education “within 45 days of the vote or 15 days after an unsuccessful vote to reconsider or rescind the original vote under 17 V.S.A. § 2661, whichever is later.” Although the timing is not set out in statute, when it is clear that the election results are final and if the merger has been approved, the Secretary of Education certifies the results of the merger vote to the Secretary of State, who then files a certified copy with the clerk of each district that will form the new union school district. 16 V.S.A. § 706g.
  - Nothing precludes the clerks from sending the certifications to the Secretary of Education soon after the vote and before the election results are final
- Initial Board Membership Vote: Both the At-Large Model and the Hybrid Model necessarily require calculation of the total certified votes received from all districts. Ideally the calculation would be completed quickly in case a recount is requested. The clerk of the new union school district would not be elected until several months later at the new union school district board’s organizational meeting. Neither statutes nor court decisions address the legal process for calculating the total at-large votes for the initial members of a union school district. As a result, the Secretary of Education, after consultation with the Secretary of State, provides the following *guidance* in connection with the election of *at-large* members of the *initial* board:
  - As soon as possible after the vote is held for the at-large members of the initial board, the clerk of each district should submit:
    - A certified copy of the results to the Secretary of Education, by (1) first class mail and (2) electronically at [Rebecca.Holcombe@vermont.gov](mailto:Rebecca.Holcombe@vermont.gov)
    - An electronic copy to [Donna.RussoSavage@vermont.gov](mailto:Donna.RussoSavage@vermont.gov)
    - A copy to the relevant superintendent(s)
  - The Secretary of Education will calculate the total votes for the at-large members of the initial board and will:
    - Certify the results to the Secretary of State
    - Forward a copy of the certification to each clerk for posting

Contact Donna Russo-Savage at [Donna.RussoSavage@vermont.gov](mailto:Donna.RussoSavage@vermont.gov) or [aoe.act46@vermont.gov](mailto:aoe.act46@vermont.gov) or (802) 479-1744 for additional information.

*This document is provided for guidance only and does not have the force of law. See the cited statutes and Barnes v. Mount Anthony Union High School District for more detail and consult with your attorney.*